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WYC:Imp 60319L 5/22/07

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Davis et al

Application No.: 09/697,009

Filed: October 25, 2000

For: **DIGITALLY MARKED OBJECTS AND
PROMOTIONAL METHODS**

Examiner: J. Janvier

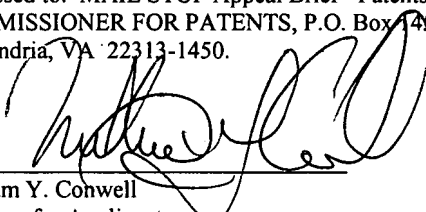
Date: May 22, 2007

Art Unit 3622

Confirmation No. 4530

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service on May 22, 2007, as First Class Mail in an envelope addressed to: MAIL STOP Appeal Brief - Patents, COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450.


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MOTION TO STRIKE

Sir:

Appellants move to strike the Supplemental Answer mailed May 17, 2007.

The Supplemental Answer makes a new ground of rejection, contrary to 37 CFR 41.43(a)(2).

DISCUSSION

The Supplemental Answer is essentially an expanded version of the first Answer. The new text is found beginning at the bottom of page 15, with the heading *In Response to the Reply Brief Filed on 7/17/06*.

The top of the next page is then headed **NEW GROUND(S) OF REJECTION**.

In the text that follows, the Examiner changes the officially-noticed "fact" on which the rejection is predicated. The Examiner correctly regarded such a change as a new ground of rejection.

A new ground of rejection is not permitted in a Supplemental Answer. 37 CFR § 41.43(a)(2) states:

A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

Because the Supplemental Answer is in violation of Rule 41, such filing should be stricken.

Date: May 22, 2007

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Respectfully submitted,

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